74 **S.B. CIVIL MISC. APPEAL NO.828/2007.**
Narvar Singh & Ors. Vs. U.I.I.Co. Ltd. & Ors.

Date of Order :: 26th February 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Manish Pitaliya, for the appellants.

By way of this appeal against the award dated 07.02.2006 made by the Motor Accidents Claims Tribunal, Chittorgarh in Claim Case No.49/2004, the surviving claimants Nos. 2 and 3 seek enhancement over the amount of Rs.6,00,000/- together with interest @ 6% per annum awarded towards compensation on account of accidental death of their father Onkar Singh, about 50 years in age and said to be getting gross salary of Rs.7,405/- per month while serving with Electricity Board.

The claim for compensation was made by the wife, son and daughter of the accident victim Onkar Singh with the submissions that on 16.11.2003 the victim suffered fatal injuries while riding his bicycle on being hit by a truck bearing registration No. HR 38 H 9388. The claimant No.1, wife of the deceased, expired during the pendency of the claim application and her name was deleted. The Tribunal found the fatal accident to have occurred for rash and negligent driving

of the truck in question. Taking up quantification of compensation, the Tribunal noticed the statements of AW-1 Narvar Singh that his father was about 50 years of age and was earning Rs.7,500/- per month while serving in the Electricity Department and had 10 years of service left and would have earned increments; that his mother expired six months after his father due to bereavement; that his sister Sumitra Kanwar in 20 years of age was yet unmarried; that his father's 12 bighas of agricultural land was now being given on contract and earlier his father was earning about Rs.4,000/- to 5,000/- per month from agriculture. A witness AW-2 Moti Nath was also produced who made oral statement that the agricultural land of the deceased was being given on contract. The Tribunal noticed from the salary certificate (Ex.11) that the gross salary of the deceased was Rs.7,405/- per month and after deductions towards loan, provident fund, medical fund, life insurance etc., his net income was shown at Rs.3,592/- per month. However, the Tribunal found that a deduction of Rs.2,000/- was made towards loan on provident fund and that was not liable to be deducted for the purpose of considering the loss of the claimants. Therefore, the Tribunal took the income of the deceased at Rs.5,592/- per month and deducting one-third wherefrom on personal expenditure, took the net loss of contribution at Rs.3,728/-, i.e. Rs.44,736/- per

annum; and with application of multiplier of 10 with reference to the remaining years of service of the deceased, calculated the amount of loss at Rs.4,47,360/-. Thereafter, the Tribunal provided for a component of likely enhancement on the earnings in future and increased the amount of pecuniary loss to Rs.5,00,000/-. The Tribunal proceeded to allow another sum of Rs.78,000/- with reference to the likelihood of the deceased earning even after retirement. The Tribunal further allowed Rs.10,000/- each to the claimants for loss of love, affection and guidance of their father and Rs.2,000/- towards funeral expenses and in this manner assessed total loss for the claimants at Rs.6,00,000/-

Assailing the award aforesaid as low and inadequate, learned counsel Mr. Manish Pitaliya appearing for the appellants has contended that the Tribunal has been in error in taking net income of the deceased only at Rs.5,592/- per month without considering that by the certificate (Ex.11) it was established that his salary was Rs.7,405/- per month and the deductions as made by the Tribunal are not proper; that the Tribunal has further erred in applying a multiplier of 10 only though in view of the age of deceased at 50 years, the multiplier of 13 minimum ought to have been applied; that the Tribunal has erred in referring to the remaining years of

service and has failed to consider that in choice of proper multiplier, mere remaining years of service were not decisive.

Having given a thoughtful consideration to the submissions made by the learned counsel for the appellants and having examined the impugned award in its totality, this Court is satisfied that the amount awarded by the Tribunal cannot be said to be lower than that of just compensation admissible in the fact situation of this case and this appeal remains bereft of substance.

The Tribunal has put a reasonable estimate on the net income of the deceased by deducting only the essential deductions and else, even though the net carry-home income of the deceased was shown at Rs.3,592/- per month in the certificate (Ex.11), the Tribunal added the amount of Rs.2,000/- that was shown to be a deduction towards loan on provident fund.

Though in the first instance application of multiplier of 10 to the figure of loss of contribution arrived after deduction of one-third on the last estimated income might appear leading to a lower side assessment of pecuniary loss but a close look at the award makes it clear that the Tribunal

has provided for all the reasonable components to assess a reasonable amount on pecuniary loss. The figure of Rs.4,47,360/- arrived after application of multiplier of 10 to the multiplicand of Rs. 44,736/- has been enhanced to Rs.5,00,000/- with reference to the component of future likely increments in the remaining 10 years of service of the deceased. Yet another amount of Rs.78,000/- has been added towards the earnings and loss of contribution to the claimants from the deceased after his retirement. On the whole, the figure of Rs.5,78,000/- assessed by the Tribunal towards pecuniary loss cannot be said to be insufficient in the present case.

Even if multiplier of 13 has not as such been mentioned by the Tribunal, it could be noticed that if the assessment is made with reference to the Second Schedule to the Act of 1988 by application of multiplier of 13 to the annual multiplicand of Rs.44,736/-, the resultant pecuniary loss would not be more than Rs.5,81,568/-. Moreover, the argument about application of multiplier of 13 only with reference to the Second Schedule remains theoretical rather than practical. With the base income standing above Rs.67 thousand per annum (Rs.5,592/- per month), the Second Schedule cannot as such be applied and then, if the

component of some future enhancement is also added leading to yet higher multiplicand, obviously the application of multiplier with reference to the Second Schedule would lead to an excessive figure towards pecuniary loss that would not be representing a fair amount of loss for the claimants and would not be of just compensation.

Apart from the aforesaid, there is another mitigating factor in the present case for which no enhancement could be considered for the claimants. Admittedly, the wife of the victim, i.e. the claimant No.1 Smt. Roop Kanwar had expired and her name deleted from the array of parties. With demise of the wife of the victim, i.e. the mother of claimants, for the amount of loss of contribution for the surviving claimants, two-third of the estimated earnings of the deceased would obviously stand on higher side and thus, for a proper multiplicand, reasonable figure would only be lower than Rs. 44,736/- per annum and then, the figure towards pecuniary loss would be much lower than that of Rs.5,78,000/- as allowed by the Tribunal.

Furthermore, it is noticed from the assertion of the claimants that there had been some income of the deceased from out of the agricultural land and by the very nature of such

source of income and the status of the parties; the said income retains itself to the claimants. The Tribunal has further allowed Rs.20,000/- towards non-pecuniary loss that too is not on the lower side.

In the ultimate analysis, the amount of Rs.6,00,000/- as allowed by the Tribunal cannot be said to be low or inadequate and rules out any scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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